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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/713,780      | 11/15/2000  | Fatih M. Uckun       | 12152.109US01       | 3061             |

23552 7590 07/16/2003

MERCHANT & GOULD PC  
P.O. BOX 2903  
MINNEAPOLIS, MN 55402-0903

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| EXAMINER |
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PAK, JOHN D

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| ART UNIT | PAPER NUMBER |
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1616

DATE MAILED: 07/16/2003

19

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/713,780

Applicant(s)

UCKUN, FATIH M.

Examiner

JOHN D PAK

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-5,9,10,15 and 25-29 is/are pending in the application.
- 4a) Of the above claim(s) 5 and 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,9,10 and 25-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/13/03 has been entered.

It is noted that applicant has added new claims 16-20. However, the highest claim number that was previously filed (and since canceled) is 24, so the new claims should have been numbered from 25. The new claims have been renumbered as claims 25-29.

Applicant is advised that the case file for 09/713,544 is presently unavailable for review. If a terminal disclaimer would be appropriate, early filing of the disclaimer would advance prosecution.

The election of species requirement made in Paper No. 4 is still applicable. Applicant elected without traverse VDacac in Paper No. 8. The election requirement and applicant's election carry over in this RCE in the absence of contrary indication by applicant.

Applicant is advised the elected species VDacac is deemed to be allowable. The examination shall now continue with another species, V(acac)<sub>2</sub>. Claims 1-4, 9-10 and 25-29 are readable on this species and thus will presently be examined to the extent that they read on the species; and claims 5 and 15 are withdrawn as not being readable on the species.

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 9-10 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Cruz (US 5,871,779).

Cruz explicitly discloses that vanadyl acetylacetonate, i.e. V(acac)<sub>2</sub>, effects a reduction in cell proliferation and angiogenesis (column 7, line 9 & paragraph bridging columns 7-8). Treatment of benign lesions is taught (column 7, lines 66-67).

The claims are thereby anticipated.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 25-27 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cruz in view of Billington et al. (US 5,648,382).

Cruz explicitly discloses that vanadyl acetylacetonate, i.e. V(acac)<sub>2</sub>, effects a reduction in cell proliferation and angiogenesis (column 7, line 9 & paragraph bridging columns 7-8). Treatment of benign lesions is taught (column 7, lines 66-67).

Cruz does not explicitly disclose treatment of vascular tissue such as coronary artery, retina and hemangioma to inhibit angiogenesis.

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However, the secondary reference by Billington et al. teach that abnormal angiogenesis is an established characteristic of coronary artery disease, diabetic retinopathy, and haemangiomas (column 1, lines 17-23). Prior art angiogenesis inhibiting compounds are used to treat such conditions (column 1, lines 30-36).

While Cruz's  $V(acac)_2$  is not explicitly disclosed for use on tissues such as coronary artery, retina and hemangioma, it has been established by the secondary reference that angiogenesis inhibiting substances would be expected to be useful to treat such abnormal angiogenesis related conditions.

Therefore, the claimed invention, as a whole, would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made, because every element and the claimed invention as a whole have been taught or suggested by the cited references.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOHN PAK whose telephone number is (703)308-4538. The examiner can normally be reached on Monday to Friday from 8:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached on (703) 308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703)308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1235.



JOHN PAK  
PRIMARY EXAMINER  
GROUP 1030